IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.No.310 of 2001
and
Cross Objection No.62 of 2002

United India Insurance Company Ltd.
Tindivanam. .. Appellant

versus

1. Sulochana
2. Gandhimadhi
3. Minor Vaishnavi

Minor rep. by mother and
next friend Gandhimadhi,
second respondent.

4. Velu ..Respondents

Cross Objection No.62 of 2002:
1. Sulochana
2. Gandhimadhi

3. Minor Vaishnavi ..
Cross Objectors
Minor rep. by mother and
next friend Gandhimadhi,
second respondent.

versus

1. United India Insurance Co. Ltd.
Tindivanam.
2. Velu ..Respondents

PRAYER: C.M.A.No.310 of 2001 is filed under Section 173 of the Motor Vehicles Act, 1988, and Cross Objection No.62 of 2002 is filed under Order XLI Rule 22 of C.P.C., against the judgment and decree dated 9.3.2001 made in M.C.O.P.No.283 of 1997 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Villupuram.

For appellant in C.M.A.No.310 of 2001/
1st respondent in Cross Objection
No.62 of 2002 : Mr.M.B.Raghavan

For respondents in C.M.A.No.310 of 2001/
Cross Objectors and 2nd respondent
in Cross Objection No.61 of 2002 : Mrs.S.Geetha

JUDGMENT

(Judgment of the Court was delivered on CHITRA VENKATARAMAN,J.)

This is an appeal by the Insurance Company against the order of the Tribunal questioning the liability to pay the compensation. There is a Cross Objection also by the claimants seeking enhancement of the compensation.

2. It is seen that the accident occurred on 9.10.1995 at 4.00 a.m., resulting in the death of the motor cyclist Sekar. The claimants are the wife, mother and the minor child of the deceased. The deceased was stated to be 40 years old at the time of the accident. The claimants made a claim petition for a sum of Rs.25,00,000/-. The Tribunal found that the accident was due to the negligent driving of the van driver. On the basis of the evidence of P.W.2, the

eye-witness, and in the absence of any evidence to the contrary, the Tribunal fastened the liability on the first respondent, who was insured with the second respondent/appellant herein. The Tribunal noted that the deceased was a Lecturer in the Arignar Anna Arts College and fixed the compensation at Rs.18,30,000/- with interest at 9% per annum, which includes Rs.18,00,000/- (15,000/- X 12 X 10) towards contribution, Rs.5,000/- towards medical bills, Rs.5,000/- towards damage to the vehicle and Rs.20,000/- towards loss of consortium and loss to the estate. The Insurance Company is on appeal, challenging the award that it is not in consonance with the facts and circumstances of the case. They also questioned the income fixed by the Tribunal at Rs.20,148/- per month.

3. A perusal of the order shows that the deceased was working in the Arignar Anna Arts College as a Lecturer in Chemistry and was earning a sum of Rs.9,635/- per month.

4. It is seen that the accident occurred in the early morning around 4 O' Clock. The eye-witness P.W.2 stated that he was riding his motor cycle in the Trichy-Chennai High Road, and at that time, a Mahindra van proceeding from Ulundurpet to Chennai, dashed against the Avanti Motor Cycle driven by the deceased coming from Chennai-Trichy High Road. The van hit against the motor

cyclist in which the deceased suffered severe head injury. Thereupon, he was taken to the Villupuram Government Hospital and thereafter to the JIPMER Hospital at Pondicherry, where he died on 12.10.1995. Going by the evidence of the eye-witness, in the absence of any evidence marked on the side of the respondents, and the first respondent remaining ex parte, the Tribunal held that the accident was due to the negligent driving of the van driver. In the absence of any evidence let in by the appellant in the course of the proceedings before the Tribunal, we do not find any merit in the appeal on the question of negligence before this Court.

5. On the question of compensation, it is seen that the deceased was 40 years old. He was working in the Arignar Anna Arts college. Apart from the income from his employment, it is stated that the deceased had other sources of income namely, from the business done in the name of his father as well as from agriculture to the tune of Rs.10,000/-. He also earned income by taking tuition. P.W.4, the father of the deceased, stated that after the demise of his son, he could not carry on the business run in his name and hence, he had closed his business. P.W.3, the Accountant in the college where the deceased worked, deposed that at the time of the accident, the deceased earned Rs.9,635/- per month and as per the Pay Commission recommendation, had he been alive, the deceased would have earned a sum of

Rs.19,074/- per month, and that in the year, his salary would have been Rs.21,223/- per month. The Principal of the College had given certificates based on the documents marked as Ex.A7 and A8 that the deceased would have retired in the year 2013 as a Full-time Supervisor. Taking note of the possibilities of further promotion leading to a better income, the Tribunal fixed the earnings of the deceased at Rs.20,148/- per month. The Tribunal, however, rejected the plea as regards the income from business carried on in the name of the father of the deceased. Taking note of the age of the deceased and as per the evidence of P.W.3, the Tribunal fixed the contribution taking the monthly contribution at Rs.15,000/- for the next ten years totalling to Rs.18,00,000/-. A sum of Rs.5,000/- was granted towards medical bills, Rs.5,000/- was granted towards damage to the vehicle and a sum of Rs.20,000/- was granted towards loss of consortium and loss of estate, totalling to Rs.18,30,000/- with interest at 9% per annum.

6. Learned counsel for the claimants, as cross-objectors, however, questioned the correctness of the multiplier adopted and the failure to award any compensation on the conventional heads.

7. We have heard the learned counsel for the cross-objectors.

8. It may be noted that at the time of the accident, the deceased was a Lecturer. The appellants could not deny the fact that had the deceased been alive, he would have enjoyed a better prospect both in his earning capacity as well as in his placement. Elaborating on the assessment of compensation in such cases, the Apex Court, in (2005) 10 SCC 720 (NEW INDIA ASSURANCE CO. LTD V. CHARLIE), held that the chances that the deceased might have got better employment or income have to be taken into account while assessing the damages to compensate the dependants. Taking note of the facts projected by the claimants, which could not be controverted by the appellants herein, we do not find any reason to disturb the contribution fixed at Rs.15,000/- per month. The second respondent, wife of the deceased, was aged about 34 years and the minor child was aged about 7 years. It may be noted that the Supreme Court, in the very same decision, held that the highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts earning independently and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age. Hence, the multiplier is fixed at 12. Taking note of this, in fitness of things, a sum of Rs.50,000/- to the young widow towards loss of consortium and a sum of Rs.25,000/- merit to be granted to the child towards loss of love and affection. Apart from this, a further sum of Rs.25,000/- is granted to the mother who had

lost her son, as against a sum of Rs.20,000/- awarded by the Tribunal. A further sum of Rs.10,000/- is granted towards funeral expenses, a sum of Rs.5,000/- is granted towards medical expenses, a sum of Rs.5,000/- is granted towards the damage to the vehicle and a sum of Rs.10,000/- is granted towards transportation charges. Thus, the compensation is arrived at as follows:

Towards contribution
(Rs.15,000/- X 12 X 12) : Rs. 21,60,000/-

Towards loss of consortium : Rs. 50,000/-

Towards loss of love and affection
to the daughter : Rs. 25,000/-

Towards loss of love and affection
to the mother : Rs. 25,000/-

Towards funeral expenses : Rs. 10,000/-

Towards medical expenses : Rs. 5,000/-

Towards damage to motor cycle : Rs. 5,000/-

Towards transportation charges : Rs. 10,000/-

Total : Rs.22,90,000/-

The Civil Miscellaneous Appeal is dismissed and the cross objection is allowed to the above extent. The compensation shall carry interest at the rate of 9% per annum, and on the enhanced amount, interest shall be payable at 7.5% per annum from the date of this order. There will, however, be no order as to costs.

ksv

To:

The Principal District Judge
Motor Accidents Claims Tribunal
Villupuram.